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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/536,345 | 03/25/2000 | Richard Polevoy | 2340-1-008 | 3087 |

23565 7590 03/13/2002

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| EXAMINER |
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LUU, TUYET PHUONG PHAM

| ART UNIT | PAPER NUMBER |
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3627

DATE MAILED: 03/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

03-13-02

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 1-3-02

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-24 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 17 is/are allowed.

☒ Claim(s) 1, 6-16, 18-21, 23 is/are rejected.

☒ Claim(s) 2-5, 22, 23 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 304

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --

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DETAILED ACTION

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 22 and 23 have been renumbered 23 and 24.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6 and 11 recite, respectively, "a protective shield to enclose and contain sharp edges of a bed frame member" and "a protective shield to enclose and contain a sharp edge or corner at least one location about a bed frame comprising side rails..." It appears that applicant's intent is to claim just "a protective shield" with the bed frame only being functionally recited.

However, in claims 8-10 and 13-16, the bed frame is positively recited.

The Examiner is considering the claims to be drawn to "a protective shield"; thus, any recitations referring to the bed frame have not been given patentable weight.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 6-16, 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,867,853 to Feld.

Feld discloses a bed frame and a protective shield affixed to the bed frame to cover sharp ends. The recitation "adapted to enclose the ends of the side rails and said junction points of said side rails and said cross members" has not be given patentable weight. In order to be given patentable weight, a functional recitation must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279.

Feld discloses a protective shield comprising a first housing (23) and a second housing (22) joined together by means of a hinge (27). The first and second housings have a securing means at the free ends.

6. Claims 1, 2 and 6-16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,890,244 to Cartwright et al.

Cartwright et al discloses a protective shield (10) affixed to the bed frame. The shield includes first and second housings (i.e., top and bottom halves) connected via a living hinge (19). The free ends are provided with securing means (32, 34).

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In claim 1, the recitation "adapted to enclose the ends of the side rails and said junction points of said side rails and said cross members" has not be given patentable weight. In order to be given patentable weight, a functional recitation must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,076,212 to Feld in view of U.S. Patent No. 5,628,080 to Quintile.

Feld discloses a permanent mounted shield for a bed frame; however, the shield fails to include an indicia permanently placed on the shield. Quintile discloses a corner guard for a mattress having indicia permanently placed on the guard. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the shield of Feld with indicia, so as to provide a means of placing information of the shield.

Allowable Subject Matter

9. Claim 17 is allowed. Claims 3-5, 22 and 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Teri Pham Luu** whose telephone number is **(703) 305-7421**. The examiner can normally be reached Monday-Friday from 7:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kathy Matecki**, can be reached at **(703) 308-2688**.

Submission of your response by facsimile transmission is encouraged. Group 3620's **official** facsimile number is **(703) 305-3597**. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence **not** permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) 305-3597) on _____ (Date) _____

(Typed or printed name of person signing this certificate)

(Signature)

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If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be directed to **kathy.matecki@uspto.gov**.

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed expressed waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature relating to the status of this application should be directed to the group receptionist at **(703) 308-2168**.



TERI PHAM LUU
PRIMARY EXAMINER

tpl
March 11, 2002